

CHAPTER 9

WATER PROTECTION

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ARTICLE I. IN GENERAL

SECTION 9-1. SHORT TITLE.

This Chapter shall be known and may be cited as the City’s “Water Protection Ordinance.”

SECTION 9-2. AUTHORITY.

This Chapter is adopted pursuant to authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.), the Virginia Stormwater Management Act (Virginia Code §§10.1-603.1 et seq.), Virginia Code §10.1-2108 of the Chesapeake Bay Preservation Act, and the federal Clean Water Act.

SECTION 9-3. PURPOSES.

The City Council finds that this Chapter is necessary to protect the health, safety and general welfare of the citizens of the City and the Commonwealth of Virginia and to prevent water from being rendered dangerous to the health of persons living in the City, and is supported by the findings of related studies that have been conducted. Therefore, the specific purposes of this Chapter are to:

Editor’s Note: Ordinance No. 15-2006, adopted April 11, 2006, repealed and re-enacted Chapter 9 in its entirety.

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- (1) Inhibit the deterioration of public waters and waterways resulting from land disturbing activities;
- (2) Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater runoff from new land development and redevelopment;
- (3) Control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
- (4) Maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
- (5) Protect the condition of public waters for all reasonable public uses and ecological functions;
- (6) Provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
- (7) Facilitate the integration of stormwater management and pollution control with other City ordinances and with federal, Commonwealth of Virginia and local programs, policies, regulations and guidelines; and
- (8) Prohibit illicit connections and discharges to the City's municipal storm sewer system.

SECTION 9-4. RULES OF CONSTRUCTION.

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

- (1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
- (2) Any reference to "this Article," "Article II," "Article III," or "Article IV" shall include references to all applicable references of Article I.
- (3) All references to "days" shall be to calendar days.
- (4) All references to a "fee schedule" shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the City Council from time to time. All required fees shall be made payable to the City Treasurer.

SECTION 9-5. DEFINITIONS.

The following terms, whenever used or referred to in this Chapter, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this Chapter:

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Agreement in lieu of a plan means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the program authority in lieu of a formal erosion and sediment control plan.

Applicant means any person submitting a plan for approval, or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

Authorized City official means includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter, except for where the context clearly indicates otherwise

Best management practices (“BMP’s”) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or storm conveyance systems. BMP’s also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, or combination of practices that is determined by the Commonwealth of Virginia, a designated area-wide planning agency, or the program authority, to be the most effective, practical means of preventing or reducing the amount of surface water runoff and pollution generated by nonpoint sources to a level compatible with water quality goals.

Board means: (i) as used in Article I, the Virginia Soil and Water Conservation Board, and (ii) as used in Article II, the Virginia Board of Conservation and Recreation.

Certified inspector means an employee or agent of the program authority implementing the City’s local erosion and sediment control program who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection or (2) is enrolled in that Board’s training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer means an employee or agent of the program authority implementing the City’s local erosion and sediment control program, who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (2) is enrolled in that Board’s training program for plan review and successfully completes such program within one (1) year after enrollment, or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code § 54.1-400, et seq.

Certified program administrator means an employee or agent of the program authority implementing the City’s local erosion and sediment control program who (1) holds a certification of competence from the Virginia Soil and Water Conservation Board in the area of program administration, or (2) is enrolled in that Board’s training program for program administration and successfully completes such program within one (1) year after enrollment.

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Channel means a natural stream or human-made waterway.

City means the City of Winchester, Virginia.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Conservation plan, erosion and sediment control plan or plan and specifications means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with necessary interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Conservation standards, criteria or specifications means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the Virginia Soil and Water Conservation Board or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia Department of Conservation and Recreation.

Development, land development and land development project as used within this Chapter each refer to any manmade change to, or construction on, a land surface that potentially changes its runoff characteristics.

Director, for the purposes of Article V of this Chapter, shall mean and include the City's Director of Public Services or the City Engineer, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V.

Discharge means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, and also refers to that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.

Drainage Basin means a watershed.

Erosion and sediment control plan means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this Chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment, and any specifications submitted with the plan.

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Erosion impact area means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of five thousand (5,000) square feet or less used for residential purposes.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the City's municipal separate storm sewer system ("MS4") that is not composed entirely of stormwater, except: (i) discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this Chapter.

Illicit connection means either of the following: (i) any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Program Authority; or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records approved by the Program Authority.

Land disturbing activity means any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands in the City or adjacent jurisdictions, including, but not limited to, clearing, grading, excavating, transporting and fill of land, except that the term shall not include:

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work that are less than five thousand (5,000) square feet.
- (2) Installation, maintenance or repair of any other underground public utility mains or lines, when such activity occurs on an existing hard surfaced road, street or sidewalk and the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced.
- (3) Construction, installation, maintenance or repair of any type of individual utility service connections.
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of a building to be served by a septic tank system.
- (5) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (6) Disturbed land areas of less than five thousand (5,000) square feet in size.
- (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- (8) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency,

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then the land area disturbed shall be shaped and established in accordance with the requirements of the Virginia Erosion and Sediment Control Handbook.

Linear development means a land development that is linear in nature, such as (but not limited to): (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of railroad tracks, rights-of-way, bridges, communication facilities and related facilities; and (iii) highway construction projects.

Local erosion and sediment control program means an outline of the various methods employed by the City to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, City ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Mitigation plan means a plan, a component of a stormwater management/BMP plan, erosion and sediment control plan, or an agreement in lieu of a plan that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Winchester and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

Nonpoint source pollution means pollution whose sources cannot be pin-pointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

Owner means the owner of the freehold of land, or the owner of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property. As used herein, *owner* also refers to, in the appropriate context: (i) any person authorized to act as the agent for the owner, (ii) any person who submits an erosion and sediment control plan or stormwater management plan for approval, or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence, and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management plan.

Permit means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the City as a prerequisite to any land development.

Permittee means (i) the person to whom a permit authorizing land disturbing activities is issued, (ii) the person who certifies that an approved erosion and sediment control plan

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will be followed, or (iii) the person who certifies that an approved stormwater management plan will be followed.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, City, town or other political subdivision of this state, any interstate body, or any other legal entity.

Plan Approving Authority means the City Engineer of the City of Winchester, Virginia, who is responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of land and for approving plans.

Pollutant refers to, without limitation, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues resulting from construction of a building or structure; noxious or offensive matter of any kind; and other, similar substances that cause or contribute to water pollution.

Program Administrator means the City Engineer for the City of Winchester, Virginia.

Program Authority means the department of Public Services and Engineering. Except for where the context clearly indicates otherwise, the term “program authority” includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter.

Public waters means and refers to the waters refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

Redevelopment for purposes of this Chapter means and refers to construction of buildings and structures as replacement(s) for existing improvements.

Residential development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three or more residential dwelling units.

Storm sewer system means the City’s municipal system of roads, streets, catch basins, retention and detention basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City which are designed or used for collecting, storing or conveying stormwater, or through which stormwater is collected, stored or conveyed.

Stormwater means any surface flow, runoff and drainage consisting of water discharged across the land surface, or through conveyances, to one or more waterways, from any

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form of natural precipitation.

Stormwater management facility maintenance agreement means an agreement that binds the owner or other designated parties to maintain and inspect stormwater management facilities constructed in accordance with this Chapter, based on specific terms and conditions of the agreement.

Stormwater management plan means a document containing material that describes how existing runoff characteristics will be maintained within a land development project, that describes controls for the management of the rate of stormwater discharge, and that describes any best management practices provided for water quality protection. A stormwater management plan may include a narrative section, a map or site plan, pertinent calculations and specifications included with the plan.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

Subdivision means the division, including resubdivision, of any lot, tract or parcel of land into two (2) or more lots, tracts or parcels, for the purpose, whether immediate or future, of sale or building development.

Watershed means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

Wetlands, non-tidal means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the federal Clean Water Act.

SECTION 9-6. DESIGNATION OF PROGRAM AUTHORITY; POWERS AND DUTIES.

- (a) The City Council hereby designates the department of Public Services and Engineering as the program authority for Articles II, III, and IV.
- (b) The program authority shall administer and enforce the provisions of this Chapter, acting by and through authorized City officials and employees.
- (c) The program authority shall establish reasonable regulations and interpretive guidelines for the administration of this Chapter. Such regulations and guidelines shall be consistent with this Chapter and all applicable federal and Commonwealth of Virginia statutes and regulations (including, without limitation, the provisions of Va.

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Code §9.1-570 and §10.1-603.7, and they shall be subject to the approval of City Council).

- (d) Within one year of the date of adoption of this Chapter the program authority shall assure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. Such positions may be filled by the same person.
- (e) The program authority shall take appropriate enforcement actions to achieve compliance with this Chapter, and shall maintain a record of enforcement actions for all active land disturbing activities and land developments.
- (f) The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the City manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the City manager on behalf of the City.

SECTION 9-7. SAVING PROVISION.

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the City under any provision in effect prior to the date of adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the City in enforcing such plans, permits and plats are hereby preserved.

SECTION 9-8. APPEALS FROM DECISIONS UNDER THIS CHAPTER.

- (a) Any person who is aggrieved by a decision of the program authority pursuant to this Chapter shall have the right of review of such action by the City Council. Any such appeal shall be filed in writing with the clerk of the City Council within ten (10) days of the date of such decision.
- (b) An appeal received by the City Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to City Council. The City Council shall review the appeal within thirty (30) days after the date of the planning commission meeting.
- (c) The City Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person. The council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The

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council's decision shall constitute the final decision of the City on the matter(s) which are the subject of the appeal.

- (d) Any person aggrieved by a final decision of the City Council pursuant to this section shall have the right of review of such decision by the circuit court of the City. Any such appeal shall be filed in writing with the circuit court within thirty (30) days of the council's final decision.
- (e) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.

SECTION 9-9. COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND DEVELOPMENT ACTIVITIES.

A grading, building or other permit for activities involving land disturbing activities may be issued by the program authority only as provided herein:

- (a) The owner shall submit with his application for such permit a proposed erosion and sediment control plan and/or stormwater management plan, as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and/or stormwater management plan and certification that the plan(s) will be followed. The permit-issuing department shall not issue a permit until all such required plans have been approved and the required certification(s) are submitted.
- (b) Prior to issuing a permit, the permit-issuing department shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the City at the applicant's expense, should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him/her by the approved plan as a result of his/her land disturbing activity.
- (c) A bond or other surety required by the permit-issuing department shall not exceed the total of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.
 - (1) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures

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identified within an approved plan, and to comply with all other terms and conditions of the plan.

- (2) The performance bond or other surety shall be provided from a date prior to the issuance of any permit from the permit-issuing department or agency until 60 days after the requirements of the approved stormwater management plan have been completed, as determined by the program authority.
- (3) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.

(d) If the program authority is required to take corrective action pursuant to this Article, then the City may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.

(e) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity in any land development project or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

SECTIONS 9-10 – 9-19. RESERVED.

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. IN GENERAL

SECTION 9-20. PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES.

No person shall engage in any land disturbing activity within the City until he has acquired a permit from the Program Administrator.

SECTION 9-21. DETERMINATION OF LAND DISTURBING ACTIVITY.

The determination of whether an activity is a land disturbing activity for purposes of this Article shall be made as provided herein:

- (a) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the

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requirements of this Article.

- (b) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:
 - (1) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
 - (2) If the off-site activity is already covered by an erosion and sediment control plan approved by the City, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Article.
- (c) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.
- (d) Land disturbing activity of less than 5,000 square feet on individual lots in a residential development shall not be exempt from this Article if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.
- (e) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Article.

SECTION 9-22. DETERMINATION OF EROSION IMPACT AREA.

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

- (a) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of this Article. The program authority shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.
- (b) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the City, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this Article, and (ii) state the date by which the plan must be submitted.

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- (c) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (d) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Article.

SECTIONS 9-23 – 9-29. RESERVED.

DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES

SECTION 9-30. APPLICABILITY.

This Article shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Article, as provided herein:

- (1) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
- (2) At all times during any land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work; and
- (3) When notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

SECTION 9-31. RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

SECTION 9-32. CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK.

Except as modified below, all plans and specifications submitted under this Article shall be in conformance with the standards, specifications and criteria of the Virginia Erosion

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and Sediment Control Handbook and those regulations promulgated by the Virginia Soil and Water Conservation Board, including, without limitation, the criteria, techniques and methods set forth in 4VAC50-30-40, as amended. The following subsections are hereby changed of VAC 50-30-40 of the Virginia Erosion and Sediment Control Regulations:

- (1) The provision found in Subsection 19b. (1) is deleted.

SECTION 9-33. REVIEW AND INSPECTION FEE.

A plan review and inspection fee shall be submitted at the time of filing any erosion and sediment control plan. This fee shall be an amount as set forth within the most recent fee schedule approved by City Council.

SECTION 9-34. EROSION AND SEDIMENT CONTROL PLAN.

Each owner subject to this Article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

- (a) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (b) The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Article. As a minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the "Virginia Erosion and Sediment Control Handbook", which by reference is adopted as a part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (§ 4 VAC 50-30-40) of the Virginia Erosion and Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (c) The program authority may require additional information as may be necessary for its complete review of the plan.
- (d) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan

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approved by the Virginia Department of Conservation and Recreation,
Division of Soil and Water Conservation. The owner shall notify the program
authority of such plan approval by such board.

SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations.
- (b) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.
- (c) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.
- (d) If the program authority fails to act on the plan within 45 days from the date the complete application was received by it, then the plan shall be deemed approved.
- (e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:
 - (1) To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this

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Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;

- (2) To clear and grub stumps and other activity directly related to the selective cutting of trees, as may be permitted by law;
- (3) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
- (4) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
- (5) To establish burrow, fill, or waste areas, if permitted by the City's zoning ordinance.

SECTION 9-36. AGREEMENT IN LIEU OF A PLAN.

(a) If land disturbing activity is for the purpose of establishing or modifying a single family detached dwelling, the program authority may allow an agreement in lieu of a plan for the construction of such dwelling, provided:

- (1) The single family dwelling is located on an individual lot which is not part of a subdivision; or
- (2) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or
- (3) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan; and
- (4) The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

(b) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of a plan was an erosion and sediment control plan.

SECTION 9-37. AMENDMENT OF APPROVED PLAN.

The program authority may change an approved erosion and sediment control plan, and/or require an owner to submit an amended plan, in the following circumstances:

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- (1) An inspection reveals that the plan is inadequate to satisfy the requirements of this Article; or
- (2) The owner finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this Article are agreed to by the program authority and the owner; or
- (3) The land disturbing activity was not commenced during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Article and Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Article.

SECTION 9-38. DUTY TO COMPLY, MAINTAIN AND REPAIR.

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

- (1) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;
- (2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3) Comply with all requirements of this Article; and
- (4) Have a person holding a certificate of competence, as described in Virginia Code §10.1-561, in charge of and responsible for carrying out the land disturbing activity.

SECTION 9-39. INSPECTION AND MONITORING.

- (a) As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:
 - (1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
 - (2) The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.
- (b) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:

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- (1) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this Article.
- (2) Except as provided in paragraph (3), below, inspections shall be conducted (i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Commonwealth of Virginia conservation standards; and (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or to any official or employee thereof shall arise therefrom.
- (3) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia Soil and Water Conservation Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.
- (4) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

SECTION 9-40. DETERMINATION OF NONCOMPLIANCE WITH PLAN.

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

- (a) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation problems; (ii) state specifically the measures needed to come into compliance with the approved plan; and (iii) state a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities.

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- (b) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Article. Furthermore, he/she shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.
- (c) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.
- (d) Upon receipt of a sworn complaint of a violation of this Article or of an approved erosion and sediment control plan, from an employee or representative of the program authority responsible for ensuring program compliance, the Program Administrator or designee may, in conjunction with or subsequent to a notice of violation, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan, requiring that all of the land disturbing activities be stopped until an approved plan and any required permits have been obtained.
 - (1) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.
 - (2) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court.
 - (3) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the City engineer or his designee may issue an order to the owner requiring that all construction or other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by certified mail to the address specified in the permit application.
 - (4) The owner may appeal the issuance of any stop-work order to the circuit court.

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- (5) Final decision of the Plan Approving Authority under this Chapter shall be subject to review by the circuit court of the City provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activities.
- (6) Any person violating or failing, neglecting or refusing to obey an order issued by the City engineer or his designee may be compelled in a proceeding instituted in the circuit court to obey the order and to comply therewith, by injunction, mandamus or other appropriate remedy.
- (7) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- (8) Nothing in this section shall prevent the Program Administrator or his/her designee from taking any other action authorized by this Chapter or by any other provision of law.

SECTION 9-41. CERTIFICATION OF PROGRAM PERSONNEL.

As required by Commonwealth of Virginia law, the City's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

- (1) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
- (2) Inspections of land disturbing activities shall be conducted by a certified inspector; and
- (3) The City's erosion control program shall contain a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

SECTION 9-42. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

- (a) Any person violating the provisions of this Article shall, upon conviction, be guilty of a Class 1 misdemeanor.
- (b) The following may apply to the circuit court for injunctive relief to enjoin a violation or a threatened violation of this Article, without the necessity of showing that an adequate remedy at law does not exist:
 - (1) The City.
 - (2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the provisions of this Article, and the program authority, that a violation of this Article has caused, or creates a probability of causing,

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damage to his property, and (ii) neither the person who has violated this Article nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.

- (c) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the City in a civil action for damages.
- (d) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of Title 10.1, Chapter 5, Article 4 of the Code of Virginia shall be subject to a civil penalty of one hundred dollars (\$100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. An appropriate official or employee of the program authority, or a certified inspector for the City, may issue a summons for collection of the civil penalty and the action may be prosecuted by the City.
- (e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the City against such person.
- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter any condition of a permit issued under this Chapter or any provision of this Chapter, the Program Administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed \$2,000.00. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.
- (g) Any civil penalties assessed by a court pursuant to this section shall be paid into the City treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

SECTIONS 9-43 -9-49. RESERVED.

ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

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DIVISION 1. IN GENERAL

SECTION 9-50. STORMWATER MANAGEMENT PLAN; APPLICABILITY.

- (a) Each owner shall comply with the requirements of this Article prior to commencing any land development, or allowing any land development to occur, on his property, for residential, commercial, industrial or institutional use, and at all times thereafter.
- (b) No person may commence development of any land until he has submitted a stormwater management/best management plan (BMP) to the City and has obtained the City's approval of that plan. No building permit, site plan approval or other permit for activities involving land development shall be issued by any City department or official, unless a stormwater management/BMP plan has been approved by the program authority consistent with the provisions of this division.

SECTION 9-51. STORMWATER MANAGEMENT/BMP PLAN; REQUIREMENTS.

Each person subject to this Article shall submit to the program authority for review and approval a stormwater management/BMP plan as provided herein:

- (a) Together with the required stormwater management/BMP plan, the owner of property proposed for development or redevelopment shall submit:
 - (1) An application on a form provided by the program authority;
 - (2) Any required application fee, as set forth within the most recent fee schedule approved by City Council.
 - (3) A certification stating that all land clearing, construction, land development and drainage will be done according to the approved plan;
 - (4) Specifications for stormwater management and best management practices in order to satisfy the requirements of Division 2 of this Article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as are determined by the program authority to be necessary to allow a complete review of the plan.
- (b) For purposes of this section, major permit decisions include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, grading permits, building and erosion and sediment control plans and any permit related to the land development required under Commonwealth of Virginia or federal law.

SECTION 9-52. REVIEW AND APPROVAL OF STORMWATER MANAGEMENT/BMP PLAN.

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Each stormwater management/BMP plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.
- (b) The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 9-51 and all other requirements of this Article.
- (c) During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.
- (d) The program authority shall approve or disapprove a plan within forty-five (45) days from the date a complete application was accepted for review. The decision of the program authority shall be based on the plan's compliance with this Article. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.
- (e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:
 - (1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
 - (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
 - (3) Land development shall be conducted only within the area specified in the approved plan;
 - (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);

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- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;
 - (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and
 - (7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.
- (f) Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-53. MONITORING AND REPORTING.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

- (a) Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.
- (b) The condition requiring monitoring and reporting shall state the method and frequency of such monitoring.
- (c) The condition requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-54. ISSUANCE OF PERMIT; SURETY.

A grading, building or other permit for activities involving land development may be issued by a permit-issuing department only as provided herein:

- (a) The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. The permit-issuing department shall not issue a permit

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until such approved plan and certification are submitted.

- (b) Prior to the issuance of any such permit, the permit-issuing department shall require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the City attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 9-68, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority.
- (c) A performance bond or other surety required by the permit-issuing department pursuant to paragraph (b) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.
- (d) If the program authority is required to take corrective action pursuant to section 9-68 upon the failure of the owner to do so, the City may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.
- (e) Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the City attorney.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-55. FEES.

Each owner seeking approval of a stormwater management/BMP plan shall pay a fee

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upon submittal of such plan, and shall pay a fee for each inspection, in amounts as set forth in the most recent fee schedule approved by City Council.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.10.

DIVISION 2. PLAN REQUIREMENTS: WATER QUANTITY AND WATER QUALITY PROTECTION

SECTION 9-56. STORMWATER MANAGEMENT FACILITIES AND CHANNELS.

Stormwater management facilities and modifications to channels required as part of a stormwater management/BMP plan shall be designed, installed and constructed as provided herein:

- (1) Stormwater management facilities, best management practices, and modifications to channels shall be designed and constructed in compliance with applicable local, Commonwealth of Virginia and federal laws, regulations, and standards, including, but not limited to the Federal Clean Water Act; the Virginia Stormwater Management Act (VA Code §§10.1-603.2 et seq) and the stormwater management regulations promulgated by the state Board of Conservation and Recreation, set forth within 4 VAC 3-20-10 et seq.; the National Flood Insurance Program; and the City of Winchester Stormwater Management Design Manual.
- (2) Stormwater management facilities and best management practices shall be designed and sited to capture, to the maximum extent practicable, the runoff from the entire land development project area and, in particular, areas of impervious cover within the development project area.
- (3) Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.
- (4) Post-development runoff rate of flow shall be maintained, as nearly as practicable, as the pre-development runoff characteristics, subject further to the requirements of §9-52.
- (5) The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-57. NON-STRUCTURAL MEASURES.

Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:

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- (1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.
- (2) *Non-structural measures* include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-58. CONTROL OF PEAK RATE AND VELOCITY OF RUNOFF.

- (a) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:
 - (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.
 - (2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.
 - (3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.
 - (4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.
- (b) Pre-development and post-development runoff rates determined for purposes of paragraph (a) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.
- (c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

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- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops;
 - (3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;
 - (4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;
 - (5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and
 - (6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.
- (d) The program authority may exempt a land development or part thereof from some or all of the requirements of this section if all of the following conditions are satisfied:
- (1) The land development or a part thereof is within a water supply protection area or other rural land;
 - (2) The program authority determines that the application of the requirements of this Article would cause damage to the environment to an extent which exceeds the benefits of the strict application of all of the requirements of this Article;
 - (3) All requirements which are determined by the program authority to not apply to the land development or part thereof shall be set forth in the stormwater management/BMP plan; and
 - (4) The granting of an exemption of any requirement of this Article will not create a threat to the public health, safety or welfare, or to the environment.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-59. BEST MANAGEMENT PRACTICES.

- (a) Each stormwater management/BMP plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity treatment, as provided herein:

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- (1) Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.
 - (2) Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.
 - (3) Calculation methods and expected removal ranges for various best management practices shall be included in the design manual maintained by the program authority.
- (b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:
- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops; and
 - (3) Single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-60. CONTRIBUTION TO REGIONAL STORMWATER MANAGEMENT PROGRAM.

- (a) Each stormwater management/BMP plan shall require that the owner contribute to a regional stormwater management program, as provided herein:
- (1) If the land development is located within the watershed of a regional stormwater management program established by the county which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the county establishing the program.
 - (2) An owner's payment pursuant to paragraph (1) shall relieve the owner of the requirements of section 17-314, if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of section 17-315, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (1) shall not relieve an owner of his responsibility to comply with any other requirement of this Chapter, except as provided in this section.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

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SECTION 9-61. REVIEW; APPROVAL.

Each stormwater management plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (1) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.
- (2) During its review of the plan, the program authority may meet and correspond with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.
- (3) The program authority shall approve or disapprove a plan within 45 days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 45-day period, the plan shall be deemed approved.
- (4) Nothing in this Article or section shall require approval of a plan, or any portion thereof, that is determined by the program authority to pose a danger to the public health, safety, or general welfare, or to deviate from sound engineering practices.

SECTION 9-62. CONDITIONS OF APPROVAL.

Each stormwater management plan approved by the program authority shall be subject to the following:

- (a) The owner shall comply with all applicable requirements of this Article, the Virginia Stormwater Management Act (Va. Code §§10.1-603.2 et seq), the Commonwealth of Virginia stormwater regulations set forth in 4 VAC 3-20-10 et seq, and the Virginia Stormwater Management Handbook.
- (b) The owner shall certify in writing that all land clearing, construction, land

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development and drainage will be done according to the approved plan.

- (c) Land development shall be conducted only within the area specified within the approved plan.
- (d) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (b), above.
- (e) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of approval of a stormwater management plan, that the owner enter into a right of entry agreement, or grant an easement, for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.
- (f) As a condition of approval of a stormwater management plan, the program authority may require the owner to monitor and report to the program authority as follows:
 - (1) Any monitoring conducted by the owner shall be for the purpose of ensuring compliance with the approved stormwater management plan and to determine whether the plan provides effective stormwater management.
 - (2) The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.
 - (3) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

SECTION 9-63. DUTY TO COMPLY, MAINTAIN AND REPAIR; MAINTENANCE AGREEMENT.

- (a) The owner shall maintain and repair all structural and nonstructural stormwater management measures required by the plan, as follows:
 - (1) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is lawfully transferred to the City or to another governmental entity.
 - (2) If an approved stormwater management plan requires structural or

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nonstructural measures, the owner shall execute a stormwater management facilities maintenance agreement prior to the program authority granting final approval for any site plan or other development for which a permit is required. The agreement shall be recorded in the office of the clerk of the circuit court for the City of Winchester and shall run with the land. If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development receives final approval from the City, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project. The required stormwater management facilities maintenance agreement shall be in a form approved by the City attorney and shall, at a minimum:

- (i) Designate for the land development the owner, governmental agency, or other legally-established entity which shall be permanently responsible for maintenance of the structural or non-structural measures required by the plan;
- (ii) Pass the responsibility for such maintenance to successors in title; and
- (iii) Ensure the continued performance of the maintenance obligations required by the plan and by this Article.

SECTION 9-64. AMENDMENT OF APPROVED STORMWATER MANAGEMENT PLANS.

An approved stormwater management plan may be changed or amended only as provided herein:

- (a) The program authority may change an approved stormwater management/BMP plan as provided herein:
 - (1) The owner shall submit additional data identified in section --- (plan requirements) in order to allow the program authority to determine whether any such change will comply with the requirements of this Article.
- (b) The owner shall submit to the program authority a written request and justification for a change or amendment of an approved stormwater management plan, and shall provide such data as may be required by the program authority in order to determine whether the proposed change will comply with the requirements of this Article.
- (c) The program authority shall conduct its review and shall make its decision with respect to the proposed change in accordance with the procedures for initial submission and approval of a stormwater management plan.

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- (d) If the proposed change to the approved plan complies with the requirements of this Article, the program authority shall approve such proposed change in writing.
- (e) An owner shall make no changes to an approved plan without first complying with this section.

SECTION 9-65. EXCEPTIONS.

Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article shall be made and reviewed as follows:

- (a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office. The request shall address the factors listed in paragraph (c), below.
- (b) After receiving and considering a recommendation from the program authority, the City Council shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.
- (c) A request for exception may be granted by the City Council, upon finding that:
 - (1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;
 - (2) The exception requested is the minimum necessary to afford relief;
 - (3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and
 - (4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.

SECTION 9-66. DEDICATION OF FACILITIES TO THE PUBLIC.

The owner of a stormwater management facility required by this Article may offer for dedication any such facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

- (a) Any such offer shall be made in writing and delivered to the office of the City attorney, with a copy to the program authority. The owner, at his sole expense, shall provide any documents or information requested by the program authority or the City Council. The program authority shall make a preliminary assessment as to whether the dedication of such facility is appropriate and will promote the

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public health, safety and general welfare. In making its assessment, the program authority shall inspect the facility in question and shall determine whether it has been properly maintained and is in good repair. The program authority shall estimate the annual cost of maintenance and repair of the facility, and of the remaining useful life of the facility. The program authority shall forward a report of its assessment to the City Council.

- (b) The City Council shall review the offer, taking into account the recommendations of the program authority and other City staff or officials, and may accept or refuse the offer of dedication.
- (c) If the City Council decides to accept the offer of dedication, the document dedicating the stormwater management facility shall be recorded in the office of the clerk of the circuit court for the City of Winchester.
- (d) If the dedication of a stormwater management facility is required by City ordinance as a condition of approval of a subdivision plat, then the applicable provision of the City's subdivision ordinance shall apply in lieu of this section.

SECTION 9-67. INSPECTIONS.

The program authority shall inspect any land subject to an approved stormwater management plan, as provided herein:

- (a) During the installation of stormwater management measures, or the conversion of erosion and sediment control measures into stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.
- (b) Upon completion of the installation of stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan.
- (c) The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete. The inability of the program authority to conduct inspections within the time periods set forth in this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or any official or employee thereof shall arise therefrom.
- (d) The program authority shall be allowed, after giving notice to the owner, occupier or operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry

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agreement, or if the owner has granted to the program authority an easement for purposes of inspection and maintenance.

SECTION 9-68. DETERMINATION OF NONCOMPLIANCE WITH PLAN; PROCEDURE.

- (a) Upon a determination by the program authority that an owner has failed to comply with an approved stormwater management plan, the following procedures shall apply:
 - (1) The program authority shall serve upon the owner a written notice to comply. The notice shall be served by certified mail, to the owner's address of record with the City assessor's office, or by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall:
 - (i) Instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent or abate drainage, erosion, or water pollution problems;
 - (ii) Specify the measures required to comply with the plan;
 - (iii) Specify the time within which such required measures must be completed; and
 - (2) If the owner fails to take corrective measures stated in the notice, within the time specified in the notice, then the City may revoke any building permit or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this Article.
 - (3) If the program authority determines, upon completion of a maintenance inspection, that maintenance or repair of the measures has been neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner.

SECTION 9-69. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

Enforcement of this Article shall be as follows:

- (a) Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000.00), or up to 30 days imprisonment for each violation, or both.
- (b) The City may apply to the circuit court to enjoin a violation or threatened violation of the provisions of this Article, without the necessity of showing that an

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adequate remedy at law exists.

- (c) Without limiting the remedies that may be obtained pursuant to this section, the City may bring a civil action against any person for violation of any provision of this Article, or of any term or condition of a permit, plan, or maintenance agreement. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation.
- (d) With the consent of any person who has violated or failed, neglected or refused to obey, or comply with any permit, obligation or a plan or agreement, or any provision of this Article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified above in paragraph (c). Such civil charges shall be in lieu of any civil penalty which could be imposed under paragraph (c).

SECTION 9-70. REVIEW OF CERTAIN PROGRAM AUTHORITY ACTIONS.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:

- (a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.
- (b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the circuit court as provided in Virginia Code § 10.1-603.13.
- (c) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.

SECTIONS 9-71 - 9-79. RESERVED.

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ARTICLE IV. STREAM BUFFERS

SECTION 9-80. DUTY TO RETAIN OR ESTABLISH STREAM BUFFER.

- (a) Except as otherwise provided in this Article, any land adjacent to the following listed waters, and/or nontidal wetlands adjacent to these streams, shall provide buffers for the purposes of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff:
 - (1) Abrams Creek
 - (2) Town Run
 - (3) Hogue Run
 - (4) Buffalo Lick Run
 - (5) Redbud Run
- (b) A required stream buffer shall be no less than one hundred (100) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.
- (c) Existing stream buffers shall be retained, except as allowed in §9-83(d).
- (d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- (e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:
 - (1) Activities pertaining to the management of the stream buffer, identified in §9-81 of this Article;
 - (2) Development activities authorized in a stream buffer, identified in §9-83;
 - (3) Activities authorized in §9-82;
 - (4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.
- (f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development requires an approved plan other than a site plan, the location of existing and required stream buffers shall be shown on such plan.

SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

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- (a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.
- (b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:
 - (1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;
 - (2) Dead, diseased, and dying trees may be removed;
 - (3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
 - (4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;
 - (5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and
 - (6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (c) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:
 - (1) Dead, diseased and dying trees may be removed;
 - (2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;
 - (3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
 - (4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.
 - (5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the

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health, safety or welfare of the City's citizens and approved by the City Engineer.

SECTION 9-82. DEVELOPMENT EXEMPT FROM STREAM BUFFER REQUIREMENTS.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

- (a) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.
- (b) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:
 - (1) To the extent practical, the location of such lines shall be outside required stream buffer areas;
 - (2) No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
 - (3) Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

SECTION 9-83. DEVELOPMENT AUTHORIZED IN A STREAM BUFFER.

If otherwise authorized by applicable regulations of the City's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

- (a) A building or structure which existed on the date of adoption of this Chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the City's zoning ordinance.
- (b) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:
 - (1) To the extent practical the location of such facilities shall be outside the stream buffer;
 - (2) No more land shall be disturbed than is necessary to provide for

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- construction and maintenance of the facility;
 - (3) The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
 - (4) Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.
- (c) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.
- (d) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to §9-84:
- (1) On a lot which was of record prior to the date of adoption of this Chapter, if
 - (i) Establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or
 - (ii) The proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or
 - (iii) The proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the City's zoning ordinance, provided that such accessory building or structure must be located within the first fifty (50) landward feet of the buffer and provided further that the footprint of any such accessory building or structure shall not exceed four hundred square feet (400 SF).
 - (2) On a lot on which development within the stream buffer will consist of an ecological/wetland restoration project;
 - (3) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
 - (4) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail not exceeding five (5) feet in width;
 - (5) On a lot which was of record prior to the date of adoption of this Chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal

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systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.

SECTION 9-84. MITIGATION PLAN REQUIRED.

Each owner who seeks to develop in a stream buffer pursuant to §9-83(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

- (a) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by City council; and a certification stating that all requirements of the approved plan will be complied with.
- (b) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other requirements of this Article. The program authority shall approve or disapprove a mitigation plan within 30 days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.
- (c) Each mitigation plan shall:
 - (1) Identify the impacts of proposed development on water quality and lands within the stream buffer;
 - (2) Identify the alternatives to development in the stream buffer that have been explored by the applicant;
 - (3) Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
 - (4) Demonstrate and assure that development will be conducted using best management practices;
 - (5) Specify mitigation which will address water quality and stream buffer impacts; and
 - (6) Contain other information requested by the program authority.
- (d) Each mitigation plan shall be evaluated by the program authority based on the following criteria:
 - (1) Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
 - (2) Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
 - (3) Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

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SECTION 9-85. INSPECTIONS

The program administrator shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in Article IV.

SECTIONS 9-86 - 9-89. RESERVED.

ARTICLE V. STORM SEWER DISCHARGES

SECTION 9-90. FINDINGS AND DETERMINATIONS.

- (a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.
- (b) Amendments to the federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the City to control through ordinance, permit, contract or other available means (collectively, the City's "stormwater management program") the contribution of pollutants into waters of the United States.
- (c) This Article is adopted as an integral part of the City's stormwater management program.

SECTION 9-91. DISCHARGES TO THE CITY'S STORM SEWER SYSTEM.

- (a) It shall be unlawful and a violation of this Article to:
 - (1) Throw, drain, or otherwise discharge into the City's storm sewer system any pollutants or waters containing pollutants other than stormwater;
 - (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, any such connections owned or authorized by the City prior to

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- (3) Cause or allow any illicit connection to the City's storm sewer system; or
- (4) Violate any condition or provision of this Article, or any permit or approval granted to allow any stormwater discharges to the City's storm sewer system.

(b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverting stream flows or rising groundwater, or infiltration of uncontaminated groundwater;
- (4) Public safety activities, including, but not limited to, law enforcement and fire fighting;
- (5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
- (6) Lawn watering;
- (7) Individual car washing on residential properties;
- (8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);
- (9) Street washing;
- (10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;
- (11) Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and
- (12) Any activity by the City, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.
- (13) Discharges specified in writing by the director as being necessary to protect public health and safety.
- (14) Dye testing, following notification to the City engineer.

(c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the Program Authority (as defined in §9-5 of this Chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this Article.

SECTION 9-92. WATERCOURSE PROTECTION.

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Every person owning property through which a watercourse passes, or such a person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity or the watercourse.

SECTION 9-93. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of such compliance may be required in a form acceptable to the Program Authority prior to allowing discharges to the City's storm sewer system.

SECTION 9-94. INSPECTIONS AND MONITORING.

- (a) The Program Authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance. The Program Authority shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this Article, including the prohibition of illicit discharges to the storm sewer system. The Program Authority may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this Article.
- (b) The Program Authority shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

SECTION 9-95. ENFORCEMENT, PENALTIES, REMEDIES.

- (a) A willful violation of the provisions of this Article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this Article is maintained or permitted to remain shall constitute a separate offense.
- (b) Any person who commits any act prohibited by this Article shall be liable to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- (c) Any person who commits any act prohibited by this Article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.

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- (d) The City may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or in equity, shall be no defense to any such action.
- (e) The Program Authority shall have authority to order that any activity found to be in violation of this Article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.
- (f) Any discharge caused or permitted to exist in violation of any provisions of this Article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the Program Authority, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).
- (g) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law.
- (h) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.